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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,867	12/17/2001	Thomas Joseph Kopacz	1443.009US1	5354
7590 01/30/2004				
Schwegman, Lundberg, Woessner & Kluth, P.A. P.O. Box 2938 Minneapolis, MN 55402			EXAMINER BOYD, JENNIFER A	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,867

Applicant(s)

KOPACZ ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed November 14, 2003, have been entered and have been carefully considered. Claims 1, 2 and 16 are amended, claims 34 – 49 are cancelled and claims 1 -33 are pending. In view of Applicant's Amendment, the Examiner withdraws the objection of claim 2 as set forth in paragraph 8 of the previous Office Action dated August 8, 2003. Despite these advance, the invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1 – 21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "wherein the nonwoven (internally wire-tufted) laminate does not require elastic materials or fibers" as found in newly amended claims 1 and 16

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is new matter, because this negative limitation is not literally supported by the Specification. *Ex Parte Grasselli*, 231 USPQ 393.

Claim Rejections - 35 USC § 102

5. Claims 1 – 11, 16 – 27 and 32 – 33 remain rejected under 35 U.S.C. 102(e) as being anticipated by Lange et al. (US 2002/0127937 A1). The details of the rejection can be found in paragraphs 9 - 10 of the previous Office Action dated August 8, 2003.

6. The amendment to claim 1 requires that “the nonwoven laminate does not require elastic materials or fibers”. Although the Applicant states that the laminate does not require elastic materials or fibers, it should be noted that the use of “comprising” in claim 1 is open language so it fails to preclude the use of any other material, such as an elastic materials or fibers. It is the position of the Examiner that that nonwoven laminate can include any other layer including elastic materials or fibers. The Examiner has applied the same logic with claim 16.

Claim Rejections - 35 USC § 103

7. Claims 12 – 15 and 28 – 31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lange et al. (US 2002/0127937 A1). The details of the rejection can be found in paragraphs 11 – 12 of the previous Office Action dated August 8, 2003.

Response to Arguments

8. Applicant's arguments filed November 14, 2003 have been fully considered but they are not persuasive.

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9. In response to Applicant's Arguments that the elastic layer of Lange cannot be equated to one of the Applicant's non-woven layers, the Examiner respectfully argues the contrary. As discussed above, the amendment to claim 1 requires that "the nonwoven laminate does not require elastic materials or fibers". However, it should be noted that claim 1 uses the term "comprising" which is considered to be open language. Therefore, by inclusion of the term "comprising", the claim language fails to preclude the use of any other material, such as an elastic materials or fibers. It is the position of the Examiner that that nonwoven laminate can include any other layer including elastic materials or fibers. If the Applicant wishes to positively recite that the laminate "does not require elastic materials or fibers", it is suggested to amend the claim language to "consisting". The Examiner has applied the same logic with claim 16.

10. In response to Applicant's Arguments that Lange teaches gathers and not tufts and that the gathers are directed externally, the Examiner respectfully argues the contrary. The Examiner agrees that Lange teaches gathers but Lange also teaches tufts on the same material. The gatherable web can be made of a non-woven web made from spunbonding, bonded carding and meltblowing (pages 2 - 3, section [0026]), which would result in fiber protrusions, or "tufted" areas. It should be noted that the Applicant states in the Specification on page 17, lines 15 - 25 that the "tufts can be formed by a variety of methods, including, but not limited to, meltblown (polymer), cast film, spunbond, bonded-carded web, and so forth". Lange teaches that when the composite material is used as a wet-wipe, a soft elastic layer, or "non-woven layer", is provided on both exposed surfaces of the wipe (page 5, section [0059]). Therefore, a non-woven layer encloses the gatherable web with tufts on both sides which results in the gatherable, or "tufted material", to be considered an inner layer or directed inwardly.

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11. In response to Applicant's Arguments that the phrase "wire-tufted" and "internally wire-tufted" are not process limitations, the Examiner respectfully argues the contrary. Although the Applicant is using the phrase "wire-tufted" to describe a laminate, the phrase "wire-tufted" also describes how the laminate was formed, thus is considered a process limitation. In the Applicant's Specification on page 17, lines 15 – 25, the Applicant teaches that tufts can be formed by a forming wire but also by perforated plates, perforated drum, meltblowing, casting film, forming filaments, spunbonding and bonded-carded web forming. It should be noted that all of these methods result in a non-woven fabric with protrusions, or tufts. Additionally, the non-woven layer encloses the gatherable web on both sides which results in the gatherable, or "tufted material", to be considered an inner layer or directed inwardly. The product limitations have been met. If the Applicant requires that the tufted areas are only formed by "wire-tufting", it is suggested to the Applicant to amend the claim to be in a product-by-process format.

12. In response to Applicant's traversal of the single reference rejection under 35 U.S.C. 103, the Examiner respectfully argues the contrary. Lange discloses a gatherable web made by spunbonding, bonded-carding or meltblowing. It should be noted that those processes would inherently create a non-woven with slight fiber protrusions, or tufts. The Examiner has suggested to optimize the protrusion length using support from *In re Boesch* case law to create a nonwoven laminate with increased softness, absorbency and bulkiness.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

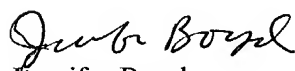
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.


Jennifer Boyd
January 22, 2004


CHERYL A. JUSKA
PRIMARY EXAMINER